

# THE STATE OF NEW HAMPSHIRE

## SUPREME COURT

**In Case No. 2005-0281, In the Matter of John P. Griffith and Joan H. Griffith, the court on May 11, 2006, issued the following order:**

The appellant, John P. Griffith, appeals an April 2005 order of the trial court that, after construing his divorce decree as amended by stipulation, found that he was obligated to continue making monthly alimony payments to the appellee, Joan H. Griffith. At oral argument, the appellant indicated that three issues were before us: (1) the interpretation of the alimony provision of the parties' amended divorce decree; (2) the acceleration of the payment of the alimony arrearage in an October 2004 order; and (3) his pending motion to strike. We affirm.

In reviewing the meaning of a divorce decree, we review the decree de novo. Sommers v. Sommers, 143 N.H. 686, 692 (1999). We consider the intent of the parties as expressed in the language of the stipulation. Id. Findings of fact by the trial court are binding upon us unless unsupported by the evidence or erroneous as a matter of law. Id. at 690. Absent a transcript of the hearing in the trial court, we assume that the evidence was sufficient to support the decision reached. See Atwood v. Owens, 142 N.H. 396, 396 (1997). Accordingly, we review the trial court's decision for errors of law only, see id. at 397.

Paragraph 10 of the parties' amended divorce decree provided that the appellant would pay the appellee \$500 per month alimony "until the settlement or other disposition of the matter described in sub-paragraph A of Schedule 1 and payment, if any to [appellee] pursuant to subparagraph A of Schedule 1." (Paragraph 10). Subparagraph A of Schedule 1 provided "LMA: [The appellant] will pay to [the appellee] 35% of this gross fee realized, if any, from the LMA law suit. The payment shall be classified as alimony." Schedule 1 also contained a general stipulation that a "final judgment . . . for Defendant shall terminate the obligations set forth in Subparagraph A . . . as to the terminated case and [the appellant] shall have no further obligation to the [appellee] pursuant to Paragraph 10 of this Schedule 1 upon the entry of such final judgment." (Schedule 1).

The appellant argues that because a final judgment was entered in favor of the defendant, LMA, in the matter described in sub-paragraph A of Schedule 1, his alimony obligation ended. He contends that because he was forced to initiate a new action against LMA to collect his fees, any fees that may be recovered are

not subject to the provisions of the decree because the entry of final judgment in favor of LMA predated any fee recovery. We decline to construe the language so narrowly.

Under Paragraph 10, alimony does not terminate until the settlement or other disposition of the LMA litigation and the payment of fees, if any, to the appellee pursuant to Schedule 1. Schedule 1 requires that the appellant pay the appellee 35% of the gross fee, realized, if any, from the LMA law suit. The definition of “from” includes “the source, cause, means or ultimate agent of an act or condition.” Webster’s Third New International Dictionary 913 (unabridged ed. 2002). Paragraph 10 and Schedule 1 can be read to limit the fees payable to those resulting from one lawsuit rather than to those actually paid prior to entry of final judgment. Had the parties wished to limit the payment temporally, they could have chosen to use such language rather than the broader language of Schedule 1. It is clear that the parties intended that the fees from the LMA lawsuit would replace the monthly alimony payments. The appellant conceded at oral argument that judgment on his claim for fees has been entered against LMA, that with interest the claim is currently valued up to \$900,000 and that it is still possible that the entire amount will be paid. Given the parties’ intent and the language of the decree, we conclude that the trial court did not err in finding that the appellant was required to continue making monthly alimony payments to the appellee. We also find no merit in the appellant’s argument concerning impossibility of performance.

The appellant also argues that the acceleration of the arrearage payment in an October 2004 order violated his due process rights because he was not given notice that the arrearage would be addressed at the hearing on the appellee’s motion for modification. We will assume without deciding that this issue is properly before us. The motion for modification specifically included requests that the trial court: (1) order the appellant to pay all back alimony; and (2) enforce the parties’ existing agreement concerning alimony payments. Accordingly, the appellant had sufficient notice that the arrearage would be addressed at the October 2004 hearing.

Finally, we consider the appellant’s motion to strike. Among the documents that the appellant seeks to have stricken is the order that he attached to his ex parte motion to stay the superior court orders pending appeal. Having clearly considered the order in previously denying the motion to stay, we deny the motion to strike. We note, however, that given our ruling today, the documents which are the subject of the motion to strike were not relevant to the analysis.

Affirmed.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox,  
Clerk**